

**LPA – CONSULTANT  
PROFESSIONAL SERVICES AGREEMENT**

CITY OF LINCOLN  
ALFRED BENESCH & COMPANY  
PROJECT NO. HSIP-5241(6)  
CONTROL NO. 13347  
56<sup>TH</sup> & YANKEE HILL ROAD

**THIS AGREEMENT**, made and entered into by and between the City of Lincoln, hereinafter referred to as the "Local Public Agency" or "LPA", and Alfred Benesch & Company, hereinafter referred to as the "Consultant," and collectively referred to as the "Parties".

**WITNESSETH**

**WHEREAS**, the LPA used a qualification based selection process to select the Consultant to render professional services for the above named project at the location shown on Exhibit "A", which is attached and hereby made a part of this agreement, and

**WHEREAS**, the Consultant is qualified to do business in Nebraska and has met all requirements of the Nebraska Board of Engineers and Architects to provide consultant engineering services in the State of Nebraska, and

**WHEREAS**, Consultant is willing to perform the services in accordance with the terms hereinafter provided, agrees to comply with all federal, state, and local laws and ordinances applicable to this agreement, and agrees to comply with all applicable federal-aid transportation related program requirements, so that Consultant's costs under this agreement will be fully eligible for federal reimbursement, and

**WHEREAS**, the LPA and Consultant intend that the services under this agreement be completed in accordance with the applicable terms and conditions of the Nebraska LPA Guidelines Manual for Federal Aid Projects; hereinafter referred to as LPA Manual (See definition in Section 1), and

**WHEREAS**, the Consultants primary contact person for LPA will be the LPA's representative, who has been designated as being in responsible charge of the project, and who is referred to herein as RC or Responsible Charge, and

**WHEREAS**, the Parties understand that the State of Nebraska, Department of Transportation is involved in this federal-aid project on behalf of the FHWA only for issues related to the eligibility of the project for reimbursement of project costs with federal-aid funds.

**NOW THEREFORE**, in consideration of these facts, the Parties hereto agree as follows:

**SECTION 1. DEFINITIONS**

WHEREVER in this agreement the following terms are used, they will have the following meaning:

"LPA" stands for Local Public Agency, and in this agreement means City of Lincoln, unless the context otherwise requires. LPA may also be used to refer generally to other Local Public Agencies. Local Public Agencies include, but are not necessarily limited to; Nebraska Cities, Villages, Counties, Political Subdivisions, Native American Tribes, and other entities or organizations found to be eligible sub recipients of federal funds for transportation projects, and

by the Consultant prior to abandonment or termination compared to the total amount of work contemplated by this agreement.

#### **SECTION 12. OWNERSHIP OF DOCUMENTS (11/17/11)**

All surveys, maps, reports, computations, charts, plans, specifications, electronic data, shop drawings, diaries, field books, and other project documents prepared or obtained under the terms of this agreement are the property of the LPA and the Consultant shall deliver them to the LPA at the conclusion of the project without restriction or limitation as to further use.

LPA acknowledges that such data may not be appropriate for use on an extension of the services covered by this agreement or on other projects. Any use of the data for any purpose other than that for which it was intended without the opportunity for Consultant to review the data and modify it if necessary for the intended purpose will be at the LPA's sole risk and without legal exposure or liability to Consultant.

Further, Consultants' time sheets and payroll documents shall be kept in Consultants' files for at least three years from the completion of final cost settlement by FHWA and project closeout by the State.

#### **SECTION 13. CONFLICT OF INTEREST LAWS**

The Consultant shall review the Conflict of Interest provisions of 23 CFR 1.33 and 49 CFR 18.36(b)(3) and agrees to comply with all the Conflict of Interest provisions in order for the LPA's project to remain fully eligible for Federal funding. By signing this agreement, the Consultant certifies that Consultant is not aware of any financial or other interest the Consultant has that would violate the terms of these federal provisions.

Consultants and Subconsultants providing services for LPA's, or submitting proposals for services, shall submit a Conflict of Interest Disclosure Form for Consultants. Consultants and Subconsultants shall submit a revised form for any changes in circumstances, or discovery of any additional facts that could result in someone employed by, or who has an ownership, personal, or other interest with Consultant or Subconsultant having a real or potential conflict of interest on an LPA federal-aid transportation project.

#### **SECTION 14. USE AND/OR RELEASE OF PRIVILEGED OR CONFIDENTIAL INFORMATION**

Certain information provided by the LPA or State to the Consultant is confidential information contained within privileged documents protected by 23 U.S.C. §409. "Confidential information" means any information that is protected from disclosure pursuant to state and federal law and includes, but is not limited to, accident summary information, certain accident reports, diagnostic evaluations, bridge inspection reports, and any other documentation or information that corresponds with said evaluations or reports, and any other information protected by 23 U.S.C. §409. "Privileged document" means any document pertaining to any file or project maintained by the LPA or State that is privileged and protected from disclosure, pursuant to appropriate state and federal law, including any document containing attorney-client communications between an LPA or State employee and Legal Counsel. This confidential and privileged information is vital and essential to the Consultant in order that the Consultant adequately design the project at hand on behalf of the LPA.

The Consultant agrees it will only use any information or documentation that is considered to be privileged or confidential for the purposes of executing the services by which it has agreed to render for the LPA for the project at hand only. The Consultant agrees not to reveal, disseminate, or provide copies of any document that is confidential and privileged to any individual or entity. The LPA agrees that any information or documentation that is considered to be privileged or confidential that is provided to Consultant will be marked with the following information (Approved 3/16/11):

**"CONFIDENTIAL INFORMATION:** Federal Law, 23 U.S.C §409, prohibits the production of this document or its contents in discovery or its use in evidence in a State or Federal Court. The LPA has not waived any privilege it may assert as provided by that law through the dissemination of this document and has not authorized further distribution of this document or its contents to anyone other than the original recipient."

The Consultant agrees to obtain the written approval of the LPA prior to the dissemination of any privileged or confidential information or documentation if it is unclear to the Consultant whether such information or documentation is in fact privileged or confidential.

The Consultant and the LPA agree that any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant will create liability on the part of the Consultant to the LPA for any damages that may occur as a result of the unauthorized dissemination. The Consultant agrees to hold harmless, indemnify, and release the LPA for any liability that may ensue on the part of the LPA for any unauthorized dissemination of any privileged or confidential information or documentation on the part of the Consultant.

#### **SECTION 15. FORBIDDING USE OF OUTSIDE AGENTS**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the LPA has the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

#### **SECTION 16. GENERAL COMPLIANCE WITH LAWS**

The Consultant hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work.

#### **SECTION 17. DISPUTES**

Any dispute concerning a question of fact in connection with the work covered under this agreement will be addressed in accordance with LPA Manual Section 4.4.3.5 DISPUTE RESOLUTION.

## **SECTION 18. RESPONSIBILITY FOR CLAIMS AND LIABILITY INSURANCE (PE) (1-24-12)**

The Consultant agrees to save harmless the LPA from all claims and liability due to the error, omission, or negligence of the Consultant or those of the Consultant's agents or employees in the performance of services under this agreement. Further, it is expected that in carrying out the work under this agreement, Consultant will make various decisions and judgments and Consultant will determine what actions are required by Consultant and by others to properly complete the work. Nothing in this Agreement shall be interpreted to relieve Consultant from any liability it would otherwise have to LPA in carrying out the work under this agreement.

Finally, the Consultant shall for the life of this agreement, carry insurance as outlined in Exhibit "C" and attached hereto, and hereby made a part of this agreement. In any agreement Consultant has with a Subconsultant, Consultant shall require that the insurance requirements outlined in Exhibit "C" must be met by the Subconsultant.

## **SECTION 19. COORDINATING PROFESSIONAL AND PROFESSIONAL REGISTRATION**

**19.1 Coordinating Professional:** As required by Neb.Rev.Stat. § 81-3437, if LPA's project involves more than one licensed professional engineer, the LPA shall designate a Coordinating Professional for this project. The Coordinating Professional shall apply his or her seal and signature and the date to the cover sheet of all documents and denote the seal as that of the Coordinating Professional. The Coordinating Professional shall verify that all design disciplines involved in the project are working in coordination with one another, and that any changes made to the design are approved by the corresponding discipline. "Coordinating Professional" shall have the meaning set out in § 81-3408 of the Nebraska Engineers and Architects Regulation Act (Neb.Rev.Stat. § 81-3401 et. seq.). The Coordinating Professional shall also comply with the provisions of the Act, including Neb.Rev.Stat. § 81-3437(3)(g), and the implementing Rules and Regulations, Title 110, NAC section 6.3, and when applicable, shall complete the duties of design coordination set out in Neb.Rev.Stat. § 81-3421. The Consultant shall, and require its subconsultants to cooperate with the designated Coordinating Professional.

If the Consultant's engineer has been identified as the Coordinating Professional for this project, and, for whatever reason, the designated Coordinating Professional is no longer assigned to the project, the Consultant shall provide the LPA written notice of the name of the replacement within 10 business days.

**19.2 Professional Registration:** To the extent the work requires engineering services, the Consultant shall affix the seal of a registered professional engineer or architect licensed to practice in the State of Nebraska, on all plans, documents, and specifications prepared under this agreement as required by the Nebraska Engineers and Architects Regulations Act, Neb.Rev.Stat §81-3401 et. seq.

## **SECTION 20. SUCCESSORS AND ASSIGNS**

This agreement is binding on successors and assigns of either party.

## **SECTION 21. DRUG-FREE WORKPLACE POLICY**

The Consultant shall have an acceptable and current drug-free workplace policy on file with the State.

## **SECTION 22. FAIR EMPLOYMENT PRACTICES ACT**

The Consultant agrees to abide by the Nebraska Fair Employment Practices Act, as provided by Neb.Rev.Stat. 48-1101 through 48-1126, which is hereby made a part of and included in this agreement by reference.

## **SECTION 23. DISABILITIES ACT**

The Consultant agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

## **SECTION 24. DISADVANTAGED BUSINESS ENTERPRISES**

The Consultant shall ensure that disadvantaged business enterprises, as defined in 49 CFR 26, have the maximum opportunity to compete for and participate in the performance of subagreements financed in whole or in part with federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR 26 are hereby made a part of and included in this agreement by reference.

The Consultant shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of FHWA-assisted contracts. Failure of the Consultant to carry out the requirements set forth above will constitute a breach of this agreement and, after the notification of the FHWA, may result in termination of this agreement by the LPA or such remedy as the LPA deems appropriate.

## **SECTION 25. NONDISCRIMINATION (LPA)**

- 25.1 Compliance with Regulations:** During the performance of this agreement, the Consultant, for itself and its assignees and successors in interest, agrees to comply with the regulations of the DOT relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are hereby made a part of and included in this agreement by reference.
- 25.2 Nondiscrimination:** The Consultant, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- 25.3. Solicitations for Subagreements, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subagreement, including procurements of materials or equipment, each potential Subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.
- 25.4 Information and Reports:** The Consultant shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA, State or FHWA to be pertinent to ascertain

compliance with such Regulations, orders, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall certify to the LPA, State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.

**25.5 Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the nondiscrimination provisions of this agreement, the LPA will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the Consultant under this agreement until the Consultant complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.

**25.6 Incorporation of Provisions:** The Consultant shall include the provisions of paragraphs A through E of this section in every subagreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Consultant shall take such action with respect to any subagreement or procurement as the LPA, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a Consultant becomes involved in or is threatened with litigation with a Subconsultant/Subcontractor as a result of such direction, the Consultant may request that the LPA enter into such litigation to protect the interests of the LPA and, in addition, the Consultant may request that the State and United States enter into such litigation to protect the interests of the State and United States.

## **SECTION 26. SUBLETTING, ASSIGNMENT, OR TRANSFER**

Any other subletting, assignment, or transfer of any professional services to be performed by the Consultant is hereby prohibited unless prior written consent of the LPA is obtained.

As outlined in the DISADVANTAGED BUSINESS ENTERPRISES Section of this agreement, the Consultant shall take all necessary and reasonable steps to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform subagreements. Any written request to sublet any other work must include documentation of efforts to employ a disadvantaged business enterprise.

## **SECTION 27. CONSULTANT CERTIFICATIONS**

The undersigned duly authorized representative of the Consultant, by signing this agreement, hereby swears, under the penalty of law, the truth of the following certifications, and agrees as follows:

**27.1 Neb.Rev.Stat. § 81-1715(1).** I certify compliance with the provisions of Section 81-1715 and, to the extent that this contract is a lump sum, actual cost-maximum-not-to-exceed, or actual cost-plus-a-fixed fee professional service contract, I hereby certify that wage rates and other factual unit costs supporting the fees in this agreement are accurate, complete, and current as of the date of this agreement. I agree that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the LPA determines the contract price had been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

**27.2** Neb.Rev.Stat. §§ 81-1717 and 1718. I hereby certify compliance with the provisions of Sections 81-1717 and 1718 and, except as noted below neither I nor any person associated with the firm in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds:

- a. Has employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this agreement, or
- b. Has agreed, as an express or implied condition for obtaining this agreement, to employ or retain the services of any firm or person in connection with carrying out this agreement, or
- c. Has paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with procuring or carrying out this agreement, except as here expressly stated (if any).

**25.3 Certification Regarding Debarment, Suspension, and Other Responsibility**

**Matters-Primary Covered Transactions.** Paragraph a. below contains 10 instructions that consultant agrees to follow in making the certifications contained in paragraph b. below.

**a. Instructions for Certification**

- 1. By signing this agreement, the Consultant is providing the certification set out below.
- 2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this project. The Consultant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the LPA's determination whether to enter into this agreement. However, failure of the Consultant to furnish a certification or an explanation will disqualify the Consultant from participation in this agreement.
- 3. The certification in this clause is a material representation of fact upon which reliance was placed when the LPA determined to enter into this agreement. If it is later determined that the Consultant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the LPA may terminate this agreement for cause or default.
- 4. The Consultant shall provide immediate written notice to the LPA if at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.

6. The Consultant agrees that should the proposed covered transaction be entered into, it will not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the LPA before entering into this agreement.
  7. The Consultant further agrees to include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the LPA without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
  8. The Consultant in a covered transaction may rely upon a certification of a prospective Subconsultant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Consultant may decide the method and frequency by which it determines the eligibility of its principals.
  9. Nothing contained in the foregoing will be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the Consultant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
  10. Except for transactions authorized under paragraph f of these instructions, if the Consultant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the LPA may terminate this agreement for cause or default.
- b. Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions**
1. By signing this agreement, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
    - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;



- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph a.ii above; and
- d) Have not within a three-year period preceding this agreement had one or more public transactions (federal, state, or local) terminated for cause or default.
- e) Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this agreement. I acknowledge that this certification is to be furnished to the State and the FHWA in connection with this agreement involving participation of federal-aid highway funds and is subject to applicable, state and federal laws, both criminal and civil.

#### **SECTION 28. LPA CERTIFICATION**

By signing this agreement, I do hereby certify that, to the best of my knowledge, the Consultant or its representative has not been required, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this agreement to:

- (a) employ or retain, or agree to employ or retain, any firm or person, or
- (b) pay or agree to pay to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this certification is to be furnished to the FHWA, upon their request, in connection with this agreement involving participation of Federal-Aid highway funds and is subject to applicable state and federal laws, both criminal and civil.


#### **SECTION 29. ENTIRE AGREEMENT**

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

IN WITNESS WHEREOF, the Parties hereby execute this agreement pursuant to lawful authority as of the date signed by each party. Further, the Parties, by signing this agreement, attest and affirm the truth of each and every certification and representation set out herein.

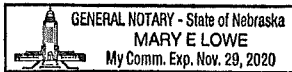
EXECUTED by the Consultant this 12<sup>th</sup> day of February, 2018.

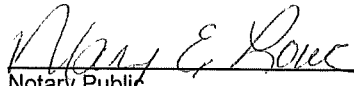
ALFRED BENESCH & COMPANY  
Anthony Dirks, P.E.

  
Sr. Vice President

STATE OF NEBRASKA )  
                                  )ss.  
LANCASTER COUNTY )

Subscribed and sworn to before me this 12 day of February, 2018.



  
Notary Public

EXECUTED by the LPA this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF LINCOLN  
Chris Beutler

\_\_\_\_\_  
Mayor

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Clerk

STATE OF NEBRASKA  
DEPARTMENT OF TRANSPORTATION  
Form of Agreement Approved for  
Federal Funding Eligibility:

\_\_\_\_\_

\_\_\_\_\_  
Date

AGR

**ENVIRONMENTAL SERVICES**

PROJECT NO.: HSIP-5241(6)  
CONTROL NO.: 13347  
LOCATION: 56<sup>th</sup> Street and Yankee Hill Road, Lincoln, NE  
STATE PC: Jared Rockemann  
LPA POINT OF CONTACT: Erin Sokolik  
CONSULTANT: Alfred Benesch & Company  
CONSULTANT POINT OF CONTACT: Craig Mielke, PWS  
STRUCTURE NUMBER(S): NA

**A. PROJECT DESCRIPTION**

This scope provides for environmental services related to compliance with the National Environmental Policy Act (NEPA) for the Project named above. Consultant shall serve as the agent for City of Lincoln, hereafter referred to as the LPA (Local Public Agency), representing them in all matters related to environmental services for this Project.

Scope Items Pertaining to the Project (checked boxes indicate the sections of this scope that apply to the project):

SOS Sec	Scope Items	Tasks
1	Categorical Exclusion	<input checked="" type="checkbox"/>
2	Farmland	<input type="checkbox"/>
3	Section 106 request letter	<input checked="" type="checkbox"/>
4	Threatened & Endangered Species Review	<input checked="" type="checkbox"/>
5	Hazardous Materials Review (HMR)	<input checked="" type="checkbox"/>
6	Section 4(f)	<input checked="" type="checkbox"/>
7	Section 6(f)	<input type="checkbox"/>
8	Floodplain Review	<input type="checkbox"/>
9	Water Quality Review	<input checked="" type="checkbox"/>
10	Noise Analysis and Report	<input type="checkbox"/>
11	Wetland & Stream Delineation	<input checked="" type="checkbox"/>
	Delineation Project Size	<input checked="" type="checkbox"/> Small <input type="checkbox"/> Med <input type="checkbox"/> Large
12	404 Nationwide Permit Application	<input checked="" type="checkbox"/>
13	404 Individual Permit Application	<input type="checkbox"/>
14	Mitigation Plan	<input type="checkbox"/>
15	Public Involvement Materials	<input checked="" type="checkbox"/>
16	Green Sheets	<input checked="" type="checkbox"/>
17	Project Management	<input checked="" type="checkbox"/>
18	Travel Time	<input checked="" type="checkbox"/>

**B. LPA, DESIGN CONSULTANT, OR STATE, ON LPA'S BEHALF, TO PROVIDE** (to the extent that the items listed are available or needed for the scope checklist above):

1. Project description, location information, Program documents (DR-73, DR-53), purpose and need statement (if applicable – Level 3 Categorical Exclusion (CE), Threatened and Endangered species (T&E) Activity Checklist, general project location map, PQS (Professionally Qualified Staff) Memos (Wetlands, HMR, EJ/LEP, T&E Species, Section 106). When appropriate, detour route information will be provided (including a list of property owners along the project and detour route).
2. If available, electronic files of current aerial photographs with Project alignment and preliminary design, existing and new rights-of-way (ROW) and easements, topographic survey, utilities data, and Limits of Construction (LOC), if available.
3. Roadway Feature File, Alignment File, Feature Codes and SMD (Simple Method Description) File (downloadable from State's website).
4. County-wide plat (ownership) or TAM (occupancy) maps for Consultant's use if landowner notification is needed. A notification letter, on LPA's letterhead for the consultant's use in landowner contact and site access will also be provided.

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

5. Waterway Permit Data Sheet and 2W plan Sheets from design consultant, if permitting services are required.
6. Wetland Delineation Data Sheets and Photographs (if already available and not part of this scope of work).
7. Environmental Justice/Limited English Proficiency Memo (provided by State if available).
8. Section 106 documentation and Professionally Qualified Staff (PQS) Memo (provided by State if available).
9. HMR PQS Memo (provided by the State if available).
10. Threatened and Endangered Species PQS Memo (provided by State if available).
11. Wetlands PQS Memo.

**C. APPLICABLE PUBLICATIONS:**

Work shall be done in accordance with the most current version of the following materials:

1. Instructions and Guidance for Completing the Nebraska Categorical Exclusion Determination Form for Federal-Aid Projects, June 2, 2015.
2. NDOR National Historic Preservation Act Section 106 Guidelines, 2015.
3. Nebraska Biological Evaluation Process, Prepared in Support of the Programmatic Agreement that was developed between FHWA, State, USFWS and NGPC, January 20, 2012.
4. Certified NEPA consulting firms and requirements. NDOR, July, 2015.
5. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1. Environmental Laboratory, Department of the Army Waterways Experiment Station, US Army Corps of Engineers, Vicksburg, Mississippi, 1987.
6. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, ERDC/EL TR-08-27. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
7. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Great Plains Region, ERDC/EL TR-08-12. Wetlands Regulatory Assistance Program, US Army Engineer Research and Development Center, Vicksburg, Mississippi, 2010.
8. Regulatory Guidance Letter No. 05-05: Ordinary High Water Mark Identification. US Army Corps of Engineers, 2005.
9. Cowardin et al. Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS 79/31. Biological Services Program, Fish and Wildlife Service, US Department of the Interior, 1979.
10. Nebraska Wetland Subclasses (Attachment K, Wetland Mitigation Banking, Standard Operating Procedures in Nebraska).
11. Nebraska Department of Roads. Hazardous Materials Review Guidance manual (August 2015).
12. Nebraska Department of Roads. Procedure: Wetland and Water Resource Delineation and Water Conveyance Structure Investigation, (January 2013 DRAFT).
13. Nebraska Department of Roads. Nebraska Public Involvement Procedure (September, 2015).
14. Nebraska Department of Roads. Standard Delineation Report (Draft In Preparation).
15. Guidance for Completing the Section 4(f) Review Process in Nebraska for Federal-Aid Projects (May 28, 2015).
16. Programmatic Categorical Exclusion Agreement Between the Federal Highway Administration and the Nebraska Department of Roads (April, 2015).

**D. CONSULTANT SHALL PROVIDE TO LPA OR STATE, ON LPA'S BEHALF:**

1. CE Document and Resource Reviews
  - a. Project Description and Purpose & Need (when applicable). Consultant will determine if the provided project description meets the NDOR guidance for project

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- descriptions and revise as necessary for use in the CE document, consultation letters, and public involvement materials. If a Purpose & Need statement is required (applicable for Level 3 CEs) the consultant will determine if the original Purpose & Need meets the NDOR guidance requirements and if necessary, draft a revised Purpose & Need statement for inclusion in the CE document. Consultant will coordinate with the Design Consultant and the City to revise the Purpose and Need statement, as well as the description of any alternatives considered, for inclusion in the CE document.
- b. CE Determination Form for Federal-Aid Projects. When the Consultant determines whether the Project will qualify as a Level 1, 2 or 3 CE under the existing CE Programmatic Agreement, they will notify the Project's assigned State NEPA Environmental Project Manager (PM) and complete the appropriate Level (1,2,3) of the CE Form. Consultant will notify the State NEPA Environmental PM if a threshold has been crossed which elevates the level of CE documentation. Consultant will obtain or produce supplemental information, figures and resource maps to attach to the NEPA Form or to be placed into the Project file as back-up reference material for the document. Figures and resource maps are required to be attached to the NEPA Form (as per the CE guidance manual). If not required as an attachment, Consultant shall produce them for the NEPA project file. Consultant's effort shall also include up to three (3) progress meetings as needed, with LPA and/or State by telephone.
- c. Vicinity Map and Location Aerial Figure of the Environmental Study Area. Consultant will prepare a Project Vicinity map on a 7.5 Minute Quadrangle Topographic Map base (1:24,000 scale), showing the Project location with insert showing the county and its position in Nebraska. The Project Location Aerial Figure shall be shown on an aerial photograph as the background, with the overall Environmental Study Area mapped (minimum ¼ mile from centerline, right and left), the Project start and end points plotted, and pertinent constraints such as Limits of Construction depicted, if known.
- d. Documentation and Revisions. Consultant will submit the completed CE Determination Form for Federal-Aid Projects (including attachments) to the LPA, State and FHWA (if Level 3) for review and approval (assume 2 rounds of comments from NDOR and 2 rounds of comments from FHWA if Level 3).
- e. CE Quality Control. The consultant shall submit to LPA and State evidence that the CE document has had a quality control review by the Consultant's Principal NEPA Author or Project Manager (as identified in the firm's current, approved NEPA Certification submittal - Category 101A), other than the document author. The submittal shall accompany both draft and final NEPA documents and may be in the form of a transmittal letter with the name, date and signature of the QC reviewer, on the Consultant's internal review process form, on NDOR's QC review form, or when the electronic CE Form allows, provide evidence of QC review in the appropriate position on the CE form.
- f. CE Comment Tracking Table: The consultant shall maintain a summary table of all review comments and resolution of comments made by LPA, State and FHWA during document review and revision processing. Comments shall be organized by the CE Form's subject title and question number. The comment tracking table shall be submitted to LPA, State or FHWA, as appropriate, along with the revised draft and final documents.
2. **Farmland. THIS SERVICE NOT ANTICIPATED**
- a. ~~Farmland Conversion Form. If there is farmland located in the Project Environmental Study Area and its use may be converted to other purposes as part of the Project, Consultant will prepare a Natural Resource Conservation Service (NRCS) Farmland Conversion Form CP-106 and perform coordination with NRCS, if necessary.~~
3. **Section 106 State Historic Preservation Office/Tribal Historic Preservation Office (SHPO/THPO).**
- a. Section 106 Review Request Letter. Consultant will complete the Section 106 Review Request Letter and submit it as a PDF to the State's Section 106 Professionally Qualified Staff (PQS), copy the LPA Project Coordinator and NEPA Environmental PM. The Section 106 Review Request Letter shall include a Vicinity Map and a Location Figure, showing the project's start and end points.

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4. Section 4(f) Exception or De Minimis Determination.
  - a. Section 4(f) Initial Assessment Form. Consultant will determine if adjacent Section 4(f) properties such as public parks, recreation areas, and wildlife/waterfowl refuges, or historic sites of local, state or national significance are present, as part of the resource review. Consultant will prepare the Section 4(f) Initial Assessment Form and submit to State NEPA Environmental PM for review and approval. The approved Section 4(f) Initial Assessment Form will be sent to the Consultant for inclusion in the CE appendices.
  - b. Section 4(f) Documentation. If a Section 4(f) property is identified within the Project area, the project or undertaking must determine a 'use' of land from that property within the meaning of Section 4(f). If it is determined that there is a 'use' of the land then coordination with State must occur and one or more of the following documents will be prepared by the Consultant:
    - 1) Section 4(f) Exceptions Form
    - 2) Section 4(f) De Minimis Form
    - 3) Coordinate with the Official With Jurisdiction for the Section 4(f) resource, to obtain concurrence that the impact will/will not adversely affect the resource. If more than one Section 4(f) property has a 'use' determined, analysis and document preparation for the additional properties would be considered out of scope and the additional effort would be negotiated as a Supplement to this Agreement.
  - c. Individual Section 4(f) Evaluation. If needed, an Individual Section 4(f) Evaluation and documentation would be considered out-of-scope and the additional effort would be negotiated as a Supplement to this Agreement.
5. Section 6(f) Analysis Documentation. THIS SERVICE NOT ANTICIPATED
  - a. ~~Consultant will research and document whether Section 4(f) resources are present. If yes, then Consultant will contact the Nebraska Game and Parks Commission to determine if Section 6(f) resources are present. If Section 6(f) resources are present, the Consultant will determine if a conversion will occur. If replacement land is needed, coordination with the jurisdictional agencies would be required, as well as additional Section 6(f) documentation. This additional Section 6(f) coordination and documentation as a result of a conversion would be considered out-of-scope and additional hours will be negotiated as a Supplement to this Agreement.~~
6. Floodplain Review. THIS SERVICE NOT ANTICIPATED
  - a. ~~Consultant will research and document whether the project is located within a Zone A floodplain.~~
  - b. ~~If a floodplain encroachment will occur due to the project, the analysis and floodplain permitting would be considered out-of-scope and additional hours will be negotiated as a Supplement to this Agreement.~~
7. Water Quality Review.
  - a. Consultant will research and document whether impaired waters (303d list) are located within the Environmental Study Area.
  - b. If impacts to the impairment of the water resource will be affected by the project, Consultant will coordinate with NDEQ.
  - c. Consultant will coordinate with the Design Consultant and the City to document efforts to protect or improve water quality through the use of Best Management Practices
8. Threatened and Endangered Species (T&E) Review.
  - a. Biological Evaluation (BE) Review Request Letter. Consultant will complete the BE Review Request Letter and submit it as a PDF to the State's LPA T&E PQS and NEPA Environmental PM. Consultant will revise it in response to State comments as needed. This letter will include the wetland delineation as an attachment. The NDOR T&E PQS Memo will be cited and summarized in the CE document, and included in the CE appendices.
  - b. Field Review. A field review may be needed and would be conducted by the Consultant's qualified biologist in conjunction with the wetland delineation site visit. If a wetland delineation is not required for the Project and a site visit for T&E Species is needed, a qualified biologist would perform a site visit and conduct the field review.

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9. Hazardous Materials Review (HMR).

Hazardous Materials Review. Consultant will complete a HMR within the HMR Study Area (which encompasses the Environmental Study Area and is defined in the 2016 HMR Guidance manual) that are known to be, or may potentially be, contaminated with hazardous materials. Conditions that indicate an existing release, a past release, or a material threat of a release, of any hazardous substances or petroleum products into structures, on the property or into the soils, groundwater, or surface water should be evaluated and assessed for potential impacts on the Project, and discussed in the HMR technical report. The Consultant shall:

- 1) Conduct and review local, state and federal environmental database records, searching for regulated sites within the HMR Study Area;
- 2) Conduct an on-site visual site reconnaissance survey (after coordination with the NDOR Hazardous Materials PQS). If it is determined the project will be processed as a Level 1 CE, then this survey will not be required;
- 3) Complete the HMR Visual Reconnaissance Form and photo log;
- 4) If warranted and in consultation with the NDOR Hazardous Materials PQS, the scope of the HMR may include conducting additional analysis per the HMR guidance. Additional analysis may include (1) conducting a regulatory file review (NDEQ, SFM, etc.) (2) reviewing readily available historical record sources (aerial photographs, topographic maps, Sanborn Fire Insurance maps, etc.) and/or (3) conducting interviews with local agencies and regulators.
- 5) If a subsurface investigation is determined to be necessary, a Supplement to this Agreement would be required.
- 6) Prepare a written Hazardous Materials Review Report. The Report will be submitted by the Consultant to the State for inclusion in the Project file. The NDOR Hazardous Materials PQS will summarize the results of the Report into a PQS Memo, which will be sent to the Consultant for inclusion in the CE appendices. The findings and mitigation measures stated on the PQS Memo shall be summarized in the CE document.
- 7) Quality Control. The Consultant shall perform thorough QC by a NDOR-defined Environmental Professional prior to any official HMR submittal to the State.

10. Noise Study and Report. THIS SERVICE NOT ANTICIPATED

~~Consultant shall review the Noise Analysis and Abatement Policy to determine if a noise study is required (definition of a Type I project). The NDOR PQS will verify that a noise study is needed. When no noise analysis is required, the NDOR Noise PQS and/or NDOR NEPA Environmental PM will forward the Noise PQS memo to the Consultant. Consultant shall cite the date of the Noise PQS Memo in the appropriate block of the CE Form and attach it to the document.~~

~~When a noise study is required, Consultant shall follow the NDOR Noise Analysis and Abatement Policy and provide a Noise Study Report including, but not limited to the following:~~

- ~~a. General information regarding the nature of noise and measurement of sound, 23 CFR Part 772 Standards, noise abatement criteria and noise prediction method used;~~
- ~~b. Project Description;~~
- ~~c. Table showing existing and future (20+ years from date of construction) traffic counts (Average Daily Traffic and Design Hourly Volume) as well as medium and heavy truck percentages, all to be used in conjunction with FHWA's Traffic Noise Model (TNM);~~
- ~~d. Field noise measurements are required; Consultant shall prepare a table to include such items as location, distance from Project centerline, noise levels, and other appropriate information;~~
- ~~e. Information about land use adjacent to Project;~~
- ~~f. Table showing the following:~~
  - ~~1) receptor ID (home address or business name if possible);~~
  - ~~2) distance from Project centerline;~~
  - ~~3) modeled existing noise level (TNM results);~~

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- 4) ~~predicted future no-build noise level (TNM results);~~
  - 5) ~~predicted future build noise level (TNM results);~~
  - 6) ~~Leq noise abatement criteria (66 or 71 dBA);~~
  - 7) ~~Specify if build situation approaches or exceeds Leq criteria (if substantial noise increase > 15dBA) (yes or no).~~
  - g. ~~Analyze noise abatement for feasibility and reasonableness if necessary (determined by noise impacts).~~
  - h. ~~Detour information (lane closures, how many will remain open).~~
  - i. ~~Address construction noise.~~
  - j. ~~Provide setback recommendations to local officials.~~
  - k. ~~Consultant will provide conclusions stating findings (how many impacted receptors in existing, no build and build situations, noise abatement results).~~
  - l. ~~List references.~~
  - m. ~~Prepare diagram using aerials or topographic map identifying:~~
    - 1) ~~Receivers adjacent to project;~~
    - 2) ~~Areas for possible noise abatement;~~
    - 3) ~~66 and 71 dBA noise contour lines;~~
11. Wetland and Stream Delineation Services.
- a. Site Visit. The Consultant shall visit the Project site to determine if waters of the United States (US), including wetlands, are present within the Project Delineation Limits as described below. The site visit will be conducted by a qualified wetland scientist and during the recognized growing season unless otherwise approved by the State Environmental Permits Unit (EPU) Project Manager. Delineation methods shall be in accordance with the 1987 US Army Corps of Engineers (USACE) Wetland Delineation Manual; appropriate USACE Regional Supplement (Midwest or Great Plains); and the "NDOR Procedure: Wetland and Water Resource Delineation and Water Conveyance Investigation" (January 2013 DRAFT).
  - b. Review Existing Resources/Databases. Consultant will review existing resources prior to field delineation (January 2013 DRAFT). For projects requiring new Right of Way (ROW) beyond existing, into agricultural land, the State shall be contacted for direction. In some cases, at State's direction, delineation of agricultural wetlands may be needed. The consultant shall follow the Natural Resources Conservation Service (NRCS) standard method for agricultural wetlands delineation.
  - c. Farm Service Agency (FSA) Wetland Review. In some cases, a review of FSA historic aerial photography with recorded wetland determinations may be required for permitting. This type of review is not included as part of this Scope of Services. If such a review is appropriate for the permitting of the wetland resources, additional scope and fee, appropriate to the length of the Project, shall be negotiated as a supplement to this Agreement, or with approval and if available, hours from the Reserve would be approved upon request.
  - d. Delineation Limits. For the purpose of scope and fee development, the Consultant shall assume along the project alignment, a Full Delineation shall be provided for the area 100 feet beyond the project LOCs or the project ROW, whichever is farthest from the centerline. A full delineation shall be performed for known construction access, staging, stockpiling, or waste disposal areas.

At bridge-sized culverts and bridges along the project alignment, a Full Delineation (including delineation of the Ordinary High Water Mark (OHWM) if present, and adjacent wetlands) shall be provided for the area 150 feet outside of the LOCs or ROW, whichever is farthest from the centerline.
  - e. Estimated Delineation Project Size. (See Table on pg. 1 for Project Size)
    - Small Delineation** – Can be accomplished with 1 day or less of field activities
    - Medium Delineation** – Can be accomplished with 1-3 days of field activities
    - Large Delineation** – Can be accomplished with up to 5 days of field activities



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- f. Plot Boundaries. Consultant shall plot the data on aerial photographs. Data plotted on aerial photographs will include project environmental study area boundaries and project delineation limits, roadway alignment and stationing when available. Data will include wetland boundaries, wetland types, OHWM and location of data collection points, photographs, and wetland acres. Map scale must be drawn to a scale of 1-inch = 200-feet.
  - g. Documentation of Findings. Consultant shall prepare documents according to State procedures (January 2013 DRAFT).
  - h. Quality Control. **The Consultant shall perform thorough QC checks prior to any official submittal to State.** Reports and associated data sheets shall be scrutinized for accuracy and completeness. The consultant shall submit to State evidence that the wetlands documents have had a quality control review by a Qualified Wetland Scientist or Project Manager (as defined in the firm's current, approved NEPA Certification submittal - Category 101A), other than the document author. The submittal shall accompany both draft and final documents and may be in the form of a transmittal letter with the name, date and signature of the QC reviewer. Inadequate delineation reports and/or geospatial data will be returned to the Consultant for correction.
  - i. Electronic Files and Transmittal Letter or Email. Consultant shall submit the delineation materials to State in electronic format as described in Section F. All geospatial data shall be post-processed to correct GPS data inaccuracies, compile all required information in the State geodatabase attribute tables, and checked for completeness, accuracy, and conformance to State data standards (see Section F). Geospatial data shall provide an accurate representation of field observations. If contract includes permitting services, Consultant shall submit the wetland delineation to the LPA design permitting services. Consultant shall submit the wetland delineation to the LPA design consultant to assess impacts of the road improvements on wetlands and other waters of the U.S. A Waterway Permit Data Sheet Form will then be completed by the LPA's design consultant and the design consultant or LPA, shall forward to Consultant for use in completing the Section 404 permit application. Files shall be accompanied by a transmittal letter or email.
12. Section 404 Nationwide Permitting Services.
- a. Pre-Application Meeting. Consultant shall discuss with the State the necessity of a pre-application meeting. If required, the Consultant shall arrange for, attend and conduct a pre-application meeting with the USACE, State, the LPA and their design consultant, and other interested resource agencies to discuss the wetland delineation and other issues relating to fill and disturbance impacts. Consultant shall prepare and distribute minutes. This activity would be considered in-scope, however Consultant must obtain written approval from the LPA or State when acting on the LPA's behalf, to attend and conduct the meeting. With LPA or State approval, Consultant will be able to use the estimated hours for the meeting attendance and documentation.
  - b. 404 Nationwide Permit Application Package. Consultant shall prepare a 1st Draft of the 404 Permit Application Package consisting of the 404 Permit Application and Wetland Delineation Report, and the Waterway Permit Data Sheet from the design consultant (this is needed for NDOR review of whether all culverts and other items are included). The package shall include a complete project description, documentation of impacts to all wetlands and waters of the US, and wetland and stream channel mitigation. Electronic files of the documents will be submitted to State for review and approval. The Consultant shall revise materials per State comments and resubmit a subsequent draft to State for review and approval.
  - c. Jurisdictional Determination (JD) from the USACE. In some cases, at State's direction, the Consultant shall request the USACE to make a Preliminary and/or Final JD decision. The JD request would consist of the Consultant's submittal of either a preliminary wetland determination or a final delineation, along with a cover letter requesting the JD. If the JD request would require additional supporting documentation beyond that specified above, at State's direction additional scope would be defined and a supplement to this Agreement would be negotiated.
  - d. Agency Coordination. Consultant shall correspond with the USACE, whether in writing or personal contact documented in a telephone memo or meeting notes. Consultants are expected to be available to provide additional information, answer questions, respond to public comments, and attend and conduct a meeting, if necessary. This activity would be considered in-scope, however Consultant must obtain written approval from the LPA, or State on LPA's behalf, to attend and

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- conduct the meeting. With written approval from LPA, or State on LPA's behalf, Consultant will be able to use the hours for the meeting attendance and documentation. Any correspondence with the USACE, if necessary, shall be submitted to the State in draft form for approval from LPA, or State on LPA's behalf, at least 10 days before final submittal. If needed, Consultant shall coordinate with NDEQ and obtain a letter of 401 Water Quality Certification. If wetlands are non-jurisdictional, Consultant shall obtain a Letter of Opinion from NDEQ, stating compliance with the non-degradation clause of Title 117 Nebraska Surface Water Quality Standards.
- e. Final Deliverables. Consultant shall prepare and submit to LPA, or State on LPA's behalf, the electronic files and hard copies of all materials. For the final package, the Consultant will submit one bound copy to LPA and electronic files to State on NDOR's ftp site. The Consultant shall submit a hard copy of the 404 permit application package to the USACE and NDEQ (when required) unless otherwise directed by LPA, or State on LPA's behalf.
13. Section 404 Individual Permit Application. THIS SERVICE NOT ANTICIPATED
- a. ~~Alternatives Analysis and Sequencing Demonstration~~. If required, all tasks specified above for Nationwide permits, also apply to Individual Permits with the following additional tasks: Consultant shall prepare an Alternatives Analysis and Sequencing Demonstration for inclusion with the Individual Permit Application. For LPA projects, this will involve incorporating materials provided by the LPA's design consultant. The Consultant will also handle coordination activities with the USACE and other regulatory and resource agencies, as needed.
14. Mitigation Plan. THIS SERVICE NOT ANTICIPATED
- a. ~~Mitigation Documentation~~. If required, the Consultant shall prepare materials for submittal of a conceptual mitigation plan and the associated 12 components of Mitigation documentation for submittal to the USACE. This will involve incorporating materials provided by the roadway or bridge design consultant into a single document to identify mitigation locations, types of wetlands to potentially develop, and buffer areas associated with the mitigation areas. If a Mitigation Plan is needed and not originally contracted, additional scope and fee shall be negotiated as a supplement to this Agreement.
15. Public Involvement Materials.
- a. The Consultant will coordinate with the City and their Design Consultant to obtain copies of all Public Involvement materials and documentation prepared for the proposed project. This would include the Public Involvement Plan, public notices, meeting minutes, handouts, public comments, response, a summary of all public involvement conducted, distribution lists, legal notices, stakeholder meetings, among other items. Consultant will prepare appropriate summaries of these documents for inclusion in the CE, as well as provide input during the Public Involvement process. This input includes attending public meetings, reviewing the comments and responses, reviewing materials to be presented to the public, and providing technical information for any responses that address environmental issues.
- b. Additional hours will be negotiated with the Consultant, by supplement to this Agreement, for preparation of additional public involvement materials required to support increased levels of Public Involvement.
16. Green Sheet.
- a. Consultant shall prepare the Green Sheet for the Project, which details all applicable environmental project commitments and conditions.
17. Project Management and Meetings.
- a. This task includes activities to initiate and monitor project schedules, workload assignments and internal cost controls throughout the project. Also included are efforts to prepare and process invoices, prepare project correspondence with the LPA or State on LPA's behalf; and maintain project records. Monthly Progress Reports shall be prepared and submitted according to the schedule provided by LPA, which may or may not coincide with Consultant's invoicing schedule. This task also includes coordination with the LPA and other consultants working on the project.
- Kick-off Meeting (attend in person), Progress Meetings (attend one in person, two by phone), Review Meetings (attend one in person, two by phone), Plan-in-Hand

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Meeting (attend in person), Public Involvement Planning Meetings (attend one in person, two by phone), and Public Open Houses (attend two meetings)

18. Travel Time.

- a. Site Visits. Consultant will conduct two (2) site visits for such things as, but not limited to the HMR, wetlands and stream review, and/or threatened and endangered species review. The visits should be combined when possible, for efficiency. An additional site visit will be required for the Plan-in-Hand meeting.

19. Additional Resources Requiring Detailed Analysis for CE.

Several additional site-specific resources will require more detailed analysis during the preparation of the CE. These include: Closures and detours, school boundaries/busing/coordination, cumulative impacts, and utilities coordination.

Closures and detours. Consultant will review the City of Lincoln's planning documents and coordinate with Public Works on other projects in the vicinity of the proposed project. Other project timelines will be analyzed for potential overlap and impacts to or from the proposed project. Overlapping detours will be reviewed for possible reconfiguration, and displays will be prepared for use in public meetings, mailings, and websites to illustrate these conflicts.

School boundaries/busing/coordination. Consultant will coordinate with Lincoln Public Schools regarding the potential impacts of this project on bus routes and the movement of students to and from local schools in the project area. Additional coordination, displays, or documentation may be required beyond the CE.

Cumulative impacts. Consultant will review the City of Lincoln's planning documents and coordinate with Public Works on other projects in the vicinity of the proposed project, and determine the potential for cumulative impacts, including access, detours, or construction impacts, on or from the proposed project. Cumulative impacts will be documented in the CE.

Utilities. Consultant will coordinate with the design consultant and the City to determine potential impacts to or from several major utilities in the project area, including LES overhead transmission lines, and nearby underground gas lines. Utility impacts will be documented and included in the CE.

20. ~~Final Design Phase Services.~~

~~Additional services have been requested by the City of Lincoln for the Final Design Phase, including re-evaluations through the final design and PS&E phases, attending the pre-construction meeting as well as the public open house. Additional services may also be required such as 404 Permit assistance (i.e. re-submit for expired permits), and migratory bird surveys. Time has been included in this contract for these services, but a supplement may be required should further services be requested.~~

E. DELIVERABLES (IDENTIFIED IN "SCOPE ITEMS TABLE" AND "CONSULTANT SHALL PROVIDE (SECTION D)" ABOVE:

Final Deliverables. Consultant will prepare final deliverables and submit to LPA the electronic files and hard copies of all materials.

**(Send all Deliverables to the LPA and State when acting on LPA's behalf, for review prior to submittal to the State and FHWA.**

1. Monthly Invoices with Progress Reports per LPA's scheduled delivery dates
2. Meeting Minutes (if meetings are held)
3. The Appropriate Level of CE Document (Level 1,2,3) and supporting attachments and file data
4. NRCS Form CPA-106 for Corridor Type Projects (not anticipated)
5. Hazardous Materials Review (HMR) report.

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6. Section 4(f) Initial Assessment Form and exception/de minimis documentation (if required)
7. Section 6(f) Documentation (not anticipated)
8. Wetland and Stream Delineation Report - For Full Delineation, USACE Wetland Determination Data Sheets (Midwest or Great Plains Regional Supplements) and Wetland Delineation Report including Plot(s) showing Wetland Boundaries, Wetland Types, OHWM, Waters of US and Location of Data Collection Points and Photos, and associated geospatial data (See section F data transfer below)
9. 404 Permit Application (Nationwide) - 404 Permit Application Package consisting of 404 Permit Application, Water Way Permit Data Sheet, and Wetland Delineation Report. For Individual Permits, includes Alternatives Analysis and Sequencing Demonstration (Hard Copy and Electronic Files)
10. Mitigation Plan (not anticipated)
11. Section 404 Authorization Letter, and if required, NDEQ 401 Water Quality Certification or Letter of Opinion regarding compliance with Title 117
12. A current Jurisdictional Determination from the USACE (if required)
13. Threatened and Endangered Species BE Review Request Letter
14. Public Involvement Plan (provided by others)
15. Public Notice and official Legal Notice (provided by others)
16. Project Information Packet (provided by others)
17. Public Involvement Report (provided by others) (The Public Involvement Report shall also be attached to the CE)
18. Quality Control documentation
19. Green Sheet
20. PDF copies of all materials and final electronic files (i.e. geodatabases for wetland delineations) as stated above. All supporting information shall be submitted to the State for their Project File.

**F. DATA TRANSFER**

1. It shall be the Consultant's responsibility to obtain the necessary software to translate to and from the specified format for all electronic files supplied by the LPA or State and for all electronic files prepared by the Consultant and supplied to the LPA or State.
2. For wetland delineations - plot(s) showing wetland boundaries, environmental study area boundaries, wetland types, acres, waters of US and location of data collection points and photo points, will be submitted in GIS Geodatabase (.mdb or .gdb). Coordinate system projections for all submittals shall be: NAD 1983 State Plane Nebraska FIPS 2600 (Feet). The submittal will include a completed attribute table with relevant information, such as wetland name and type, for each feature, as described in State's (2013) procedure.
3. Electronic files should be submitted with each submittal.

**G. SCHEDULE**

The Consultant shall provide a schedule of activities and deliverables upon award:

1. Notice to Proceed:
2. Contract End Date:

SHPO Review Request Letter and Section 4(f) Initial Assessment Form Submittal Due Date Goal	HMR Report Submittal Due Date Goal	BE Request Letter & Wetland Delineation Report Due Date Goal	NEPA Draft Document and 404 Permit Application Due Date Goal to NDOR

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## Environmental Services

**Project Name:** 56th Street & Yankee Hill Road Safety Project

**Consultant:** Benesch

**Consultant PM:** Craig Mielke

**LPA RC:** Erin Sokolik

NDOR PC: Jared Rockemann

**Date:** December 21, 2017

**Project Number:** HSIP-5241(6)

**Control Number:** 13347



#	Code	Classification	#	Code	Classification
1	PM	Project Manager	6	PI	Public Involvement Specialist
2	SENV	Sr. Environmental Scientist	7	UD1	User Defined 1
3	ENV	Environmental Scientist	8	UD2	User Defined 2
4	ENG	Engineer			
5	DES	Designer/Technician			

<b>Overhead Rate <sup>[1]</sup></b>	159.38%
<b>Fee for Profit Rate <sup>[2]</sup></b>	13.25%
<b>FCCM (if applicable)</b>	0.42%

### BLENDING RATES TABLE

4% annual inc. over 2 years

Template: T-WB-V1b Consult CAT EX LPA projects (rev 2-01-16)

Template: T-WB-V1b Consult CAT EX LPA projects (rev 2-01-11)			
Employee Name	Job Title & Certifications <sup>[3]</sup>	Hourly Salary Rate	% Assigned
<b>Project Manager</b>			
Craig Mielke	PM II / Group Manager	\$53.00	100%
	<b>Blended Rate:</b>	<b>\$53.00</b>	
<b>Sr. Environmental Scientist</b>			
Craig Mielke	PM II / Group Manager	\$53.00	60%
Andy Miller	PM I	\$49.00	20%
David Nelson	PM I	\$42.00	20%
	<b>Blended Rate:</b>	<b>\$50.00</b>	
<b>Environmental Scientist</b>			
Brian Fettin	Project Scientist III	\$38.25	50%
Chase Jelden	Scientist II	\$23.50	50%
	<b>Blended Rate:</b>	<b>\$30.88</b>	
<b>Engineer</b>			
Pat Kastl	Project Manager I	\$55.50	100%
	<b>Blended Rate:</b>	<b>\$55.50</b>	
<b>Designer/Technician</b>			
Chase Jelden	Scientist II	\$23.50	100%
	<b>Blended Rate:</b>	<b>\$23.50</b>	
<b>Public Involvement Specialist</b>			
Emily Molloy	Public Involvement Specialist	\$26.60	100%
	<b>Blended Rate:</b>	<b>\$26.60</b>	

**Consultant's Estimate of Hours****Environmental Services**

Project Name: 56th Street & Yankee Hill Road Safety  
 Consultant: Benesch  
 Consultant PM: Craig Mielke  
 LPA RC: Erin Sokolik  
 NDOR PC: Jared Rockemann  
 Date: December 21, 2017

Project Number: HSIP-5241(6)  
 Control Number: 13347  
 NDOR NEPA Proj Mgr: \_\_\_\_\_  
 Wetlands Project Mgr: \_\_\_\_\_

**SCOPE DETAILS**

Distance to Project Site: 60 miles  
 Estimated Travel Time to Site: 1 hours (1 way)  
 Project Management Percentage: 10%  
 Non-standard Scope Items: \_\_\_\_\_  
cumulative, schools, utilities

SOS Sec		PERSONNEL CLASSIFICATIONS						
		PM	SENV	ENV	ENG	DES	PI	Total
1	Categorical Exclusion		18	50	4	14		86
2	Farmland							
3	Section 106 SHPO/THPO		2	4		2		8
4	Section 4(f) De Minimis or exception		4	8				12
5	Section 6(f) Analysis							
	Floodplain Review							
9	Water Quality Review		1	3				4
6	T&E Review		2	4		2		8
7	Hazardous Materials Review		50			6		56
10	Noise Study and Report							
11	Wetland and Stream Delineation Services		8	40		16		64
	Small Del. (< 1 day of field activities)		8	40		16		64
	Medium Del. (1-3 days of field activities)							
	Large Del. (> 3 days of field activities)							
12	Section 404 Nationwide Permitting Services		8	26		8		42
13	Section 404 Individual Permitting App.							
14	Mitigation Plan							
15	Preparation of Public Involvement Materials		8	16			24	48
16	Prepare Green Sheet		8	8		8		24
17	Project Management and Meetings	64						64
18	Travel Time		6	6		6		18
19	Additional Resources		24	24				48
20	Final Design Phase Services							
<b>Total Days</b>		<b>8</b>	<b>17.38</b>	<b>23.63</b>	<b>0.5</b>	<b>7.75</b>	<b>3</b>	<b>60</b>
<b>Total Hours</b>		<b>64</b>	<b>139</b>	<b>189</b>	<b>4</b>	<b>62</b>	<b>24</b>	<b>482</b>

Subtotal Cat Ex	106
Subtotal Technical Documents	64
Subtotal Wetlands	106

**Direct Expenses****Environmental Services**

Project Name: 56th Street & Yankee Hill Road Safety Project  
Consultant: Benesch  
Consultant PM: Craig Mielke  
LPA RC: Erin Sokolik  
NDOR PC: Jared Rockemann  
Date: December 21, 2017

Project Number: HSIP-5241(6)  
Control Number: 13347

Subconsultants:			Amount
Subtotal			
Printing and Reproduction:			Amount
	Qty	Unit Cost	
5,000 black & white copies @ \$0.10/sheet	500	\$0.10	\$50.00
2,000 color copies @ \$0.50/sheet	200	\$0.50	\$100.00
Subtotal			\$150.00
Mileage/Travel:			Amount
	Qty	Unit Cost	
120 miles x 10 trips	1200	\$0.545	\$654.00
Subtotal			\$654.00
Lodging/Meals:			Amount
Subtotal			
Other Miscellaneous Costs:			Amount
Subtotal			
TOTAL DIRECT EXPENSES			\$804.00



**Project Cost & Breakdown****Environmental Services**Project Name: 56th Street & Yankee Hill Road Safety ProjectConsultant: BeneschConsultant PM: Craig MielkeNDOR PC: Jared RockemannDate: December 21, 2017Project Number: HSIP-5241(6)Control Number: 13347**DIRECT LABOR COSTS**

Classification	Hours	Rate	Amount
Project Manager	64	\$53.00	\$3,392.00
Sr. Environmental Scientist	139	\$50.00	\$6,950.00
Environmental Scientist	189	\$30.88	\$5,836.32
Engineer	4	\$55.50	\$222.00
Designer/Technician	62	\$23.50	\$1,457.00
Public Involvement Specialist	24	\$26.60	\$638.40
	<b>482</b>	<b>Subtotal</b>	<b>\$18,495.72</b>

**DIRECT EXPENSES**

	Amount
Subconsultants:	
Printing And Reproduction:	\$150.00
Mileage/Travel:	\$654.00
Lodging/Meals:	
Other Miscellaneous Costs:	
	<b>Subtotal</b>
	<b>\$804.00</b>

**TOTAL PROJECT COSTS**

	Amount
Direct Labor Costs	\$18,495.72
Overhead @ 159.38%	\$29,478.48
Total Labor Costs	\$47,974.20
Fee for Profit Rate @ 13.25%	\$6,356.58
Facility Capital Cost of Money (FCCM) @ 0.420% (direct labor cost x FCCM%)	\$77.68
Direct Expenses	\$804.00
<b>TOTAL COST</b>	<b>\$55,212.46</b>

## Notes & Assumptions

Project Name: 56th Street & Yankee Hill Road Safety Project  
Consultant: Benesch  
Consultant PM: Craig Mielke  
LPA RC: Erin Sokolik  
NDOR PC: Jared Rockemann  
Date: December 21, 2017

Project Number: HSIP-5241(6)  
Control Number: 13347

## Notes & Assumptions

**1. PAYMENT METHOD**

Payments under this Agreement will be made based on a Cost Plus Fixed Fee for Profit (CPFF) payment method. Consultant will be paid for acceptable actual services performed plus a fixed fee for profit in accordance with Section 4. PAYMENTS.

**2. TOTAL AGREEMENT AMOUNT**

For completion of the services as outlined in this Agreement, Consultant will be paid up to the following amounts:

- \$ 48,855.88 for actual services performed and direct expenses.
- \$ 6,356.58 for a fixed fee for profit
- \$ 55,212.46 total agreement amount. Consultant's total compensation shall not exceed this maximum amount without prior written approval of State.

**3. FIXED FEE FOR PROFIT**

The fixed fee for profit is computed upon the negotiated direct labor and overhead costs. The fixed fee for profit is not allowable upon direct non-labor costs. For each invoicing period, the fixed fee for profit is calculated by multiplying the sum of the actual direct labor and overhead costs invoiced by the negotiated fee for profit rate of 13.25%. Upon completion of the services outlined in this Agreement, the Consultant may invoice the State any remaining fixed fee for profit not previously invoiced, up to the maximum fixed fee for profit of \$6,356.58. The total fixed fee for profit eligible to be paid to consultant does not vary with actual costs, but may be increased or decreased as a result of scope changes in the agreement. If all of the services under this agreement are not completed for any reason, the fixed fee for profit may be adjusted based on the State's determination of the actual percentage of services completed.

**4. ALLOWABLE COSTS**

Payment for Services under this Agreement will be made based on the payment method identified in Section 1. PAYMENT METHOD, up to the maximum amount identified in Section 2. TOTAL AGREEMENT AMOUNT. Allowable costs include direct labor costs, Subconsultant costs and other direct non-labor costs, and overhead costs.

A. Direct Labor Costs are the earnings that individuals receive for the time they are working directly on the project.

- 1) Hourly Rates: For hourly employees, the hourly earnings rate shall be the employee's straight time hourly rate for the pay period in which the work was performed. If overtime hours are worked on this project, the premium pay portion of those hours is not allowable as a direct labor cost. For salaried employees, the hourly earnings rate shall be their actual hourly rate as recorded in the Consultant's accounting books of record.
- 2) Time reports: The hours charged to the project must be supported by adequate time distribution records that clearly indicate the distribution of hours to all projects/activities on a daily basis for the entire pay period. Time reports must provide a clear identifying link to the projects: such as project description, project number, pertinent work phase, dates of service, and the employee's name and job title. There must be an adequate system of internal controls in place to ensure that time charges are correct and have the appropriate supervisory approval.

**EXHIBIT "B"**  
**FEES AND PAYMENTS**

- B. Direct Non-Labor Costs: These costs include all necessary, actual, properly documented, and allowable costs related to the Consultant completing the Services. All costs must be supported by detailed receipts or invoices. Direct non-labor costs include, but are not limited to, the following:

*Transportation, mileage, lodging, and meals, subject to limitations specified below; Communication costs; Reproduction and printing costs; Special equipment and materials required for the project and approved by LPA; Special insurance premiums if required solely for this Agreement; Subconsultant costs (includes Subconsultant's wages and direct non-labor costs); Such other allowable items as approved by LPA.*

- 1) A non-labor cost charged as a direct cost cannot be included in Consultant's overhead rate. If for reasons of practicality, Consultant is treating a direct non-labor cost category, in its entirety, as an overhead cost, then costs from that category are not eligible to be billed to this project as a direct expense.
- 2) Subconsultant costs may not exceed the costs shown on the attached Consultant's Fee Proposal for each Subconsultant unless agreed upon by the Consultant and LPA. Subconsultant costs (labor and direct non-labor costs) must have the same level of documentation as required for Consultant.
- 3) The following direct non-labor costs will be reimbursed at actual costs, not to exceed the rates as shown below.
  - a) **TRANSPORTATION** – Automobile rentals, air fares, and taxi/shuttle transportation will be actual reasonable cost and if discounts are applicable, the Consultant shall give LPA the benefit of all discounts. Receipts must be submitted with invoices.
  - b) **MILEAGE** – The reimbursement for mileage associated with the use of company owned vehicles will be the prevailing standard rate as established by the Internal Revenue Service (IRS) through its Revenue Procedures. Reimbursement for mileage associated with the use of a privately owned vehicle (POV), is limited to the lesser of:
    - (i) The mileage rate that the Consultant reimbursed to the person who submitted the claim for POV use, or
    - (ii) The prevailing standard rate as established by the IRS.
  - c) **LODGING** – The reimbursement for lodging rates will be limited to the prevailing standard rate as indicated on the U.S. General Services Administration's (GSA) website at <http://www.gsa.gov/portal/category/100120>. Consultant shall give LPA the benefit of all lodging discounts. Receipts must be submitted with invoices.
  - d) **MEALS** – The reimbursement for meals will be limited to the prevailing standard rate as indicated on the GSA website noted above. Expenses for alcoholic beverages are not allowed. Consultant shall give LPA the benefit of all meal discounts.
    - (i) For Consultant and its employees to be eligible for the meal allowance, the following criteria must be met.

Breakfast:

      - Employee is required to depart at or before 6:30 a.m., or

- Employee is on overnight travel.

Lunch:

- Employee must be on overnight travel. No reimbursement for same day travel.
- Employee is required to leave for overnight travel at or before 11:00 a.m., or
- Employee returns from overnight travel at or after 2:00 p.m.

Dinner:

- Employee leaves for overnight travel at or before 5:00 p.m, or
- Employee returns from overnight travel or work location at or after 7:00 p.m., or
- Employee is on overnight travel.

- (ii) Meals are not eligible for reimbursement if the employee eats within 20 miles of the headquarters town of the employee.
  - (iii) Meal receipts must itemize all food and drink purchased. A credit card receipt alone is not sufficient documentation.
  - (iv) Reimbursement for meal gratuities/tips will be whatever is usual, or customary, but will not exceed 20 percent.
- C. Overhead Costs include indirect labor costs, indirect non-labor costs, and direct labor additives that are allowable in accordance with Federal Acquisition Regulations 48 CFR 31 (Contract Cost Principles and Procedures). Overhead costs are to be allocated to the project as a percentage of direct labor costs. The Consultant will be allowed to charge the project using its actual allowable overhead rate. Overhead rate increases that occur during the project period will not be cause for an increase in the maximum amount established in this agreement.

**5. INVOICES AND PROGRESS REPORTS**

- A. Documents submitted to State, including invoices, supporting documentation, and other information are subject to disclosure by State under the Nebraska Public Records Act found at Neb.Rev.Stat. § 84-712 et.seq. Accordingly, Consultant shall redact or not submit to State information that is confidential, including, but not limited to, financial information such as social security numbers, tax ID numbers, or bank account numbers. Consultant understands that State does not have sufficient resources to review and redact confidential information submitted by Consultant. If such confidential information is submitted, Consultant shall have no right of action of any kind against State for the disclosure of such information.
- B. Consultant shall promptly submit invoices to LPA, no more frequently than monthly. Invoices must present actual direct labor, Subconsultant costs and other direct non-labor costs, and actual overhead, as well as the Fee for Profit based upon the actual direct labor and overhead costs billed for that period. State law may prohibit the payment of an invoice that includes charges for services rendered more than two (2) years prior to State's receipt of the invoice.
- C. Consultant must submit an invoice for all services rendered even if the total agreement amount will be, or has been, exceeded.
- D. Content of Invoice Package
  - 1) Consultant's Invoice:
    - i. The first page of an invoice must have an invoice number, invoice date, and an invoicing period (beginning date and ending date of services).

**EXHIBIT "B"**  
**FEES AND PAYMENTS**

- ii. The invoice or accompanying supporting documentation must identify each employee by name and classification, the hours worked, and the actual labor cost for each employee.
  - iii. Direct non-labor expenses:
    - 1. Direct non-labor expenses, other than travel-related expenses, must be itemized and provide a complete description of each item billed with supporting receipts or invoices.
    - 2. Travel-related expenses must be summarized and submitted on DR Form 163 (see below). Supporting receipts must be submitted with DR Form 163 when invoicing for these expenses. All supporting receipts, including meal receipts, must be kept as required in Section 17. CONSULTANT COST RECORD RETENTION. State or LPA may request submittal of meal receipts for auditing purposes during invoicing.
  - iv. Subconsultant Services: Consultant shall require subconsultants to provide the same supporting documentation, invoices, and receipts as Consultant is required to retain and submit.
- 2) Cost Breakdown Form: Each invoice package must include a completed "Cost Breakdown Form" (DR Form 162). This form is available on the Department of Roads' website at <http://www.roads.nebraska.gov/business-center/consultant/>.
- 3) Travel Log: If invoice contains any travel-related expenses, a completed "Invoice Travel Log" (DR Form 163) must be submitted with the invoice package. This form is available on the Department of Roads' website at <http://www.roads.nebraska.gov/business-center/consultant/>. Upon approval by State, Consultant may use a substitute Invoice Travel Log provided it documents substantially the same information as DR Form 163. The Travel Log must document the employee name, locations traveled, date/time of departure to the project, date/time of return to the headquarters town, and expenses for transportation, meals, and lodging.
- 4) Progress Report: A Progress Report must accompany the invoice package and document Consultant's work during the service period. If an invoice is not submitted monthly, a Progress Report must be submitted at least quarterly, either with an invoice or, if Consultant does not submit an invoice, via email to LPA and State's Project Coordinator. Progress Report must include, but is not limited to, the following:
- i. A description of the Services completed for the service period to substantiate the invoiced amount.
  - ii. A description of the Services anticipated for the next service period
  - iii. Listing of information Consultant determines is needed from LPA
  - iv. Percent of Services completed to date
- E. All invoice packages (invoice, progress report, required DR Forms, supporting material) must be submitted electronically through State's invoice workflow system OnBase, for review, approval, and payment. The user guide for the OnBase system along with training videos can be found at <http://www.roads.nebraska.gov/business-center/consultant/onbase-help/>.

for any and all things done, furnished, or relating to the Services rendered by or in connection with this Agreement or any part thereof.

**10. AGREEMENT CLOSE-OUT**

Upon submitting its final invoice, the Consultant must complete and submit to the LPA a Notification of Completion Form (DR Form 39a). The form is available on the Department of Roads' website at <http://www.roads.nebraska.gov/business-center/consultant/> and must be submitted electronically in accordance with the instructions on the form.

**11. INELIGIBLE COSTS**

LPA is not responsible for costs incurred prior to the Notice to Proceed date or after the completion deadline date set out in SECTION 6. NOTICE TO PROCEED AND COMPLETION SCHEDULE of this Agreement or as approved in writing by LPA.

**12. FEDERAL COST PRINCIPLES**

LPA will not make payments directly to Consultant for services performed under this agreement. Instead, the State will serve as a paying agent for LPA, and will pay Consultant directly for properly submitted and approved invoices using both LPA and Federal funds based on the applicable project federal cost participation percentage. The following process shall apply whenever the LPA, the State or the FHWA determines that certain costs, previously paid to Consultant, should not have been paid with federal funds by the State to Consultant. Consultant shall immediately repay the State the federal share of the previously paid amount and may invoice LPA for the costs repaid to the State. LPA shall promptly pay the full amount of the invoice from its own funds unless LPA, in good faith, disputes whether the Consultant is entitled to the payment under the agreement or the amount of the invoice. In the event of a dispute between LPA and Consultant, the dispute resolution process outlined shall be used by the parties. For performance of Services as specified in this Agreement, State, on LPA's behalf, will pay Consultant subject to the terms of this Agreement and all requirements and limitations of the federal cost principles contained in the Federal Acquisition Regulations 48 CFR 31 (Contract Cost Principles and Procedures).

**13. SUBCONSULTANT OVER-RUNS AND UNDER-RUNS**

Consultant shall require any Subconsultant to notify Consultant if at any time the Subconsultant determines that its costs will exceed its negotiated fee estimate (over-run). Consultant shall not allow any Subconsultant costs to over-run without prior written approval of the LPA. Consultant understands that the amount of any Subconsultant cost under-run will be subtracted from the total compensation to be paid to Consultant under this Agreement, unless prior written approval is obtained from LPA and, when applicable, Federal Highway Administration (FHWA).

**14. OUT-OF-SCOPE SERVICES AND CONSULTANT WORK ORDERS**

LPA may request that Consultant provide services that, in the opinion of Consultant, are in addition to or different from those set out in the Scope of Services. When LPA decides that these out-of-scope services may require an adjustment in costs, Consultant shall provide in writing:

- A. A description of the out-of-scope services,
- B. An explanation of why Consultant believes that the out-of-scope services are not within the original Scope of Services and additional work effort is required,

- C. An estimate of the cost to complete the out-of-scope services. Consultant must receive written approval from LPA before proceeding with the out-of-scope services. Before written approval will be given by LPA, LPA must determine that the situation meets the following criteria:
- 1) The out-of-scope services are not within the original Scope of Services and additional work effort is required;
  - 2) The out-of-scope services are within the basic scope of services under which Consultant was selected and Agreement entered into; and
  - 3) It is in the best interest of LPA that the out-of-scope services be performed under this Agreement.

Once the need for a modification to the Agreement has been established, the State, on LPA's behalf, will prepare a supplemental agreement. If the additional work requires the Consultant to incur costs prior to execution of a supplemental agreement, the LPA may issue a written notice to proceed prior to completing the supplemental agreement (for non-Federal aid projects) or shall use the process set out below (for Federal aid PE projects):

The Consultant Work Order (CWO) – DR Form 251 shall be used to describe and provide necessary justification for the additional scope of services, effort, the deliverables, modification of schedule, and to document the cost of additional services. The CWO form is available on the Department of Roads' website at <http://roads.nebraska.gov/business-center/consultant/>. The CWO must be executed to provide authorization for the additional work and to specify when that work may begin. The agreement will be supplemented after one or more CWOs have been authorized and approved for funding.

**15. TERMINATION COST ADJUSTMENT**

If the Agreement is terminated prior to project completion, State and LPA will compare the percentage of work actually completed by Consultant, to the total amount of work contemplated by this Agreement. This comparison will result in a payment by the State, on LPA's behalf, for any underpayment, no adjustment, or a billing to Consultant for overpayment. The State's final audit may result in an additional cost adjustment.

**16. AUDIT AND FINAL COST ADJUSTMENT**

Upon LPA's and State's determination that Consultant has completed Services under this Agreement, State, or its authorized representative, may complete an audit review of the payments made under this Agreement. The Parties understand that the audit may require an adjustment of the payments made under this Agreement. Consultant agrees to reimburse State for any overpayments identified in the audit review, and State agrees to pay Consultant for any identified underpayments.

**17. CONSULTANT COST RECORD RETENTION**

Consultant shall maintain all books, documents, papers, detailed receipts, accounting records, and other evidence pertaining to costs incurred and shall make such material available for examination at its office at all reasonable times during the agreement period and for three (3) years from the date of final cost settlement by FHWA and project closeout by the State. Such materials must be available for inspection by the State, FHWA, or any authorized representative of the federal government, and when requested, Consultant shall furnish copies.



**A. Consultant agrees to:**

- (1) Make a detailed review of its existing insurance coverage,
- (2) Compare that coverage to the expected scope of the work under this Agreement,
- (3) Obtain the insurance coverage that it deems necessary to fully protect Consultant from loss associated with the work. Also, Consultant shall have at a minimum the insurance described below:

**B. General Liability –**

- (1) Limits of at least:
  - a. \$ 1,000,000 Per Occurrence
  - b. \$ 2,000,000 General Aggregate
  - c. \$ 2,000,000 Completed Operations Aggregate (if applicable)
  - d. \$ 1,000,000 Personal/Advertising Injury
- (2) Consultant shall be responsible for the payment of any deductibles.
- (3) Coverage shall be provided by a standard form Commercial General Liability Policy covering bodily injury, property damage including loss of use, and personal injury.
- (4) General Aggregate to apply on a Per Project Basis.
- (5) LPA and the State of Nebraska, Department of Roads ("State") shall be named as Additional Insureds on a primary and non-contributory basis including completed operations (the completed work/product) for three (3) years after the work/product is complete.
- (6) Consultant agrees to waive its rights of recovery against LPA and State. Waiver of subrogation in favor of LPA and State shall be added to, or included in, the policy.
- (7) Contractual liability coverage shall be on a broad form basis and shall not be amended by any limiting endorsements.
- (8) If work is being done near a railroad track, the 50' railroad right of way exclusion must be deleted.
- (9) In the event that this contract provides for consultant to construct, reconstruct or produce a completed product, products and completed operations coverage in the amount provided above shall be maintained for the duration of the work, and shall be further maintained for a minimum period of five (5) years after final acceptance and payment.
- (10) Policy shall not contain a total or absolute pollution exclusion. Coverage shall be provided for pollution exposures arising from products and completed operations (as per standard CG0001 Pollution Exclusion or equivalent). (If the standard pollution exclusion as provided by CG0001 has been amended, please refer to the following section entitled "Pollution Coverage.")

**C. Pollution Coverage –**

- (1) In the event that the standard pollution exclusion as provided by CG0001 has been amended, coverage may be substituted with a separate Pollution Liability policy or a Professional Liability policy that includes pollution coverage in the amount of \$1,000,000 per occurrence or claim, and \$1,000,000 aggregate.
- (2) If coverage is provided by a "claims made" form, coverage will be maintained for three years after project completion. Any applicable deductible is the responsibility of

EXHIBIT "C"  
INSURANCE REQUIREMENTS FOR  
PROFESSIONAL SERVICE PROVIDORS (LPA PROJECTS)

insurance coverage required under this agreement will lapse, or may be canceled or terminated. Consultant must forward any pertinent notice of cancelation or termination to LPA and State by mail to the address listed below (return receipt requested), hand-delivery or facsimile transmission within 2 business days of receipt by Consultant of any such notice from an insurance carrier.

Copies of notices received by Consultant shall be sent to LPA, in care of LPA's Responsible Charge, and to State at the following address:

Nebraska Department of Roads  
Construction Division – Insurance Section  
1500 Highway 2, P. O. Box 94759  
Lincoln, NE 68509-4759  
Facsimile No. 402-479-4854

- (5) Failure of the owner or any other party to review, approve, and/or reject a certificate of insurance in whole or in part does not waive the requirements of this Agreement.
- (6) The limits of coverage's set forth in this document are minimum limits of coverage. The limits of coverage shall not be construed to be a limitation of the liability on the part of Consultant or any of its subconsultants/tier subconsultants. The carrying of insurance described shall in no way be interpreted as relieving Consultant, subconsultant, or tier subconsultant of any responsibility or liability under the Agreement.
- (7) If there is a discrepancy of coverage between this document and any other insurance specification for this project, the greater limit or coverage requirement will prevail.